U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Philadelphia Date: AUG 16 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Application: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was found not to be readily approvable by the District Director, Philadelphia, Pennsylvania. Therefore, the district director properly served the petitioner with notice of intent to deny the visa petition, and her reasons therefore, and ultimately denied the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on July 14, 1999. The petitioner is a 29 year-old married citizen of the United States. The beneficiary, who at this time is ten years old, was born in Kingston, Jamaica, on October 29, 1989. The beneficiary's biological mother, [redacted] and biological father, [redacted] have been identified in the record of proceeding and are still living. The district director denied the petition after determining that the beneficiary does not meet the statutory definition of "orphan" because the petitioner had not established that the beneficiary has only a sole parent as defined by the regulations. Further, the director found that the petitioner's home study report was incomplete and that a copy of the home study agency's license was not contained within the record.

On appeal, the petitioner submits additional evidence.

The only specific objection raised by the director with regard to the homestudy report was the lack of a homestudy agency license. A copy of the license was provided on appeal. Accordingly, the petitioner has overcome this portion of the director's decision.

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

> a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption...

The regulation at 8 C.F.R. 204.3(b) states that:

> *Sole parent* means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if

> his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate.

The petitioner submitted a birth certificate and birth registration form, both of which are dated April 17, 1990. The birth certificate and registration form indicate that the beneficiary is the child of [redacted] but do not indicate the name of the father. According to an Appointment of Guardian dated October 20, 1998, the beneficiary's father is [redacted] and his whereabouts are unknown.

On appeal, the petitioner submitted a Deed of Custody dated September 21, 1999, in which [redacted] and [redacted] swore that they are the beneficiary's parents and agreed to place the beneficiary in the custody of the petitioner and her husband. The Jamaican Status of Children Act of 1976 eliminated distinctions in rights and status between children born in and out of wedlock. The BIA has held that a child within the scope of the Jamaican Status of Children Act may be included within the definition of legitimate or legitimated child so long as the legitimation occurs before the child reaches the age of 18 years. Matter of Clahar, 18 I&N Dec. 1 (BIA 1981). Accordingly, the biological father has established the requisite familial tie and the child is under 18 years of age. As stated above, the sole parent definition does not apply to children born in countries which make no distinction between children born in or out of wedlock. The petitioner has not shown the beneficiary to be an illegitimate child having only a sole parent.

In this case, the term "parent" does include the biological father. Consequently, the child has two living, legal parents. Accordingly, the petitioner must demonstrate that the beneficiary meets the statutory definition of orphan as a result of abandonment by her biological parents.

The regulation at 8 C.F.R. 204.3(b) states:

> *Abandonment by both parents* means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control and possession.

> A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child who is placed temporarily in an orphanage shall not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child. A child who has been given unconditionally to an orphanage shall be considered to be abandoned.

As stated above, the petitioner submitted a Deed of Custody dated September 21, 1999, in which the biological mother and biological father were identified and agreed before a notary public to appoint the petitioner and the petitioner's husband "custodians" of the beneficiary. This document does not appear to be a surrender of all parental rights, obligations, claims and control over the child. Further, the relinquishment or release of the child by the parents to the prospective adoptive parents in anticipation of, or preparation for, adoption does not constitute abandonment.

The petitioner has submitted insufficient evidence to establish that both of the beneficiary's parents irrevocably released the beneficiary for emigration and adoption. Consequently, the beneficiary cannot be considered to be abandoned by both parents. The petitioner has not established that the beneficiary is an "orphan" within the meaning of section 101(b)(1)(F) of the Act.

Beyond the director's decision, there is conflicting information within the record. The petitioner has submitted sworn statements from the biological mother in which she swears that she has sole custody of the child and does not know the whereabouts of the child. On appeal, the petitioner submits a Deed of Custody indicating that the day after the mother swore that the biological father's whereabouts were unknown, the child's father appeared with her before a notary and identified himself as the child's parent. These conflicting documents have not been explained.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective

[redacted]

evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (Comm. 1988). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

As always in these proceedings, the burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The appeal is dismissed.